

Return to: Anne Marie Tosco, Associate Attorney, Orange County, P.O. Box 8181,
Hillsborough, North Carolina 27278

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

ORANGE COUNTY

SUPERIOR COURT DIVISION
17 CVS 245

ORANGE COUNTY, a North Carolina)	
County,)	
)	FINAL CONSENT JUDGEMENT
Plaintiff,)	(EMINENT DOMAIN ACTION)
)	
v.)	(N.C. Gen. Statutes Chapter 40A – 54)
)	
Van Houten LLC, Harrington Bank, FSB)	
)	
<u>Defendants.</u>)	

This cause came to be heard before the undersigned Superior Court Judge, upon Plaintiff's motion for final judgment, and it further appearing to the Court and the Court finding as fact that:

1. This action was duly instituted on February 20, 2017, by the issuance of summons and the filing of a Complaint, Declaration of Taking, and Notice of Deposit, along with the deposit into the Court of four thousand one hundred and ninety-seven dollars and twenty-four cents (\$4197.24), the sum estimated by Plaintiff to be just compensation for the taking of the Defendants' property described in the Complaint, Declaration, and Notice, which property is described hereinafter as "the condemned property."
2. This condemnation action is taken by Orange County ("County") to promote the public safety and welfare, to provide for construction and installation of a sanitary sewer line for the Historic Rogers Road area of Orange County, North Carolina.

3. Not less than 30 days prior to the filing of the complaint, Plaintiff provided notice required in the manner set forth in G.S. §40A-40.
4. Summons, together with a copy of the Complaint, Declaration, and Notice, were duly served upon the Defendants, who represent all the parties having or claiming to have an interest in the property.
5. The County and Defendants have negotiated terms of settlement in this case, wherein the Defendant Van Houten Group, LLC, agrees to accept the sum of four thousand one hundred and ninety-seven dollars and twenty-four cents (\$4197.24) as just compensation for the taking of Defendants' property. The parties further agree as follows:
 - a. Simultaneous with the sewer extension project, the County agrees to provide Defendant Van Houten Group with seven thousand and five hundred dollars (\$7,500.00), which is the value of one (1) sewer stub out connection for lots developed on Defendant Van Houten Group's property. Defendant Van Houten Group will be responsible for any availability fees and service charges, including but not limited to any fees and/or charges due Orange Water and Sewer Authority for service connections, sewer service, or otherwise associated with the sewer extension project.
 - b. No other easements or uses may be made within the sewer easement area without the express written consent of County and Orange Water and Sewer Authority, or their agents, successors, or assigns.
 - c. The County, its agents, successors, and assigns will seek to minimize land clearing disturbances and will comply with state and local tree and other natural resource protection laws. The County, its agents, successors, and assigns will restore and re-stabilize the surface area of the easement after any tree removal or land disturbance associated with the project, including that which may be necessary beyond but contiguous with the easement area to complete the project.
 - d. The County, its agents, successors, and assigns shall adhere to all laws and requirements for the project and remediate, mitigate, or correct damages caused by its contractors. It shall ensure that all contractors have adequate insurance, including general liability and workers compensation, and provide an adequate performance bond for their portion of the sewer extension project. It shall hold Defendant Van Houten Group harmless from any potential liability or mitigation costs stemming from permit violations or erosion control violations, restore the surface of the easement area after completion of the project.
 - e. In addition to the terms of settlement outlined in this this Finding of Fact paragraph 5, the terms of the easement obtained herein include all of the provisions of the Deed of Easement attached as Exhibit 1 to this Final Consent Judgment.

- f. The County shall duly record this Final Consent Judgment, when fully executed, in the Orange County Register of Deeds.
6. All parties have agreed to final disposition of this matter on the terms described in this Consent Judgment.

WHEREUPON, THE COURT CONCLUDES AS A MATTER OF LAW THAT:

1. Plaintiff Orange County was entitled to acquire by condemnation and did acquire the condemned property.
2. The sum four thousand one hundred and ninety-seven dollars and twenty-four cents (\$4197.24) is just compensation for the condemned property acquired by Plaintiff by eminent domain.
3. These proceedings, as far as is disclosed by the pleadings, are regular in all respects, and no reason exists not to enter final judgment.

NOW THEREFORE, IT IS ADJUDGED AND ORDERED that:

1. Final judgement is hereby entered.
2. Plaintiff, Orange County, on February 20, 2017, by the filing of a Complaint, Declaration of Taking, and Notice of Deposit, was permanently vested with title to the CONDEMNED PROPERTY, located in Orange County, North Carolina and identified by PIN 9870-32-4695 and further described as follows:

DESCRIPTION OF THE SANITARY SEWER UTILITY EASEMENT

Being part of the property as recorded in Deed Book 5506 at Page 206, Orange County Registry, containing 48,445 square feet for a sewer utility easement as shown on the prepared by Jeffrey S. Munn, for Orange County entitled "Sewer Easement Exhibit Prepared for Orange Water & Sewer Authority Property of Van Houten Group, LLC" dated February 29, 2016 and recorded in Deed Book 6266 at Pages 219-223.

DESCRIPTION OF TEMPORARY CONSTRUCTION EASEMENT

Being part of the property as recorded in Deed Book 5506 at Page 206, Orange County Registry, and extending no more than ten (10) feet beyond each surveyed boundary line, not running with a roadway right of way, of the location of the Sanitary Sewer Easement described herein, and as shown on the map prepared by Jeffrey S. Munn, for Orange County entitled "Sewer Easement Exhibit Prepared for Orange Water & Sewer Authority Property of Van Houten Group, LLC" dated February 29, 2016 and recorded in Deed Book 6266 at Pages 219-223.

3. The PROPERTY INTEREST taken is a perpetual a sanitary sewer utility easement and a temporary construction easement for the Historic Rogers Road Sanitary Sewer Expansion Project, with all the rights, privileges and appurtenances belonging thereto.
4. The LAND AFFECTED is the real property located in Orange County, North Carolina, identified by PIN 9870-32-4695 and further described as follows:

Being all of the property as recorded in Deed Book 5506 at Page 206, Orange County Registry, North Carolina; containing 27.14 acres as shown in the Geographic Information System for Orange County, and on the map prepared by Jeffrey S. Munn, for Orange County entitled "Sewer Easement Exhibit Prepared for Orange Water & Sewer Authority Property of Van Houten Group, LLC" dated February 29, 2016 and recorded in Deed Book 6266 at Pages 219-223.

5. The amount of just compensation for the property to be paid to Defendant is four thousand one hundred and ninety-seven dollars and twenty-four cents (\$4197.24)
6. The deposit shall be disbursed by the Clerk of Court as follows: four thousand one hundred and ninety-seven dollars and twenty-four cents (\$4197.24) payable to Van Houten Group, LLC, located at 181 Macon Avenue, Asheville, North Carolina, 28804.
7. Plaintiff shall cause the seven thousand and five hundred dollars (\$7500.00), determined to be the value of one sewer stub out connection, to be paid to Defendant Van Houten Group within thirty (30) days of the execution and filing of this Consent Judgment.
8. Except for the obligations outlined the terms of settlement referred to in Finding of Fact Paragraph 5, the Plaintiff is hereby released from all claims, as to the Defendants consenting hereto, that arise or that might have arisen under the pleadings in this action.
9. Plaintiff shall cause to be recorded a copy of this Consent Judgment with the Register of Deeds in any county in which the subject premises are located.

[Signatures on Following Page]

IN TESTIMONY WHEREFORE, the parties have hereunder set their hands and seals.

This is the _____ day of _____, 2017.

Superior Court Judge Presiding

We consent:

Orange County, Plaintiff

Van Houten Group, LLC, Defendant

By: Bonnie Hammersley, Manager

By: _____, Manager

Harrington Bank, FSB, Defendant

By: _____

EXHIBIT 1

(Individual or Partnership Sewer Easement With Mortgage and Temp. Easements)

PREPARED BY: Anne Marie Tosco

PIN FOR PARENT TRACT: 9870324695

RETURN TO: Kevin Lindley, Orange County Planning

REVENUE STAMPS: \$0.00

NORTH CAROLINA

ORANGE COUNTY

DEED OF EASEMENT

THIS DEED is made and entered into this the _____ day of _____ 20__, by and between **VAN HOUTEN GROUP LLC** hereinafter referred to as GRANTOR, and Orange County, a body politic and corporate of Orange County, North Carolina, with its principal office at 200 South Cameron Street, Hillsborough, North Carolina, 27278, hereinafter referred to as GRANTEE;

WITNESSETH:

THAT WHEREAS, the GRANTEE intends to construct and operate or cause to be operated a public sewage collection system, and for that purpose will construct lines of pipe and mains necessary for the proper transmission of sewage, and for such purposes needs to acquire rights and easements, some of which will be located on GRANTOR's property:

NOW, THEREFORE, in consideration of the sum of One and No/100 (\$1.00) Dollar and other good and valuable consideration paid to the GRANTOR, the receipt and sufficiency of all

of which is hereby fully acknowledged, the said GRANTOR does hereby give, grant, quitclaim, and convey unto the GRANTEE, its successors and assigns, (1) the right, privilege, and perpetual exclusive easement for the location, construction, operation, maintenance, alteration; repair and patrol of underground sanitary sewer and/or other utility lines; and (2) four temporary easements for the purpose of constructing, installing and placing underground sanitary sewer and/or other utility lines; both together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the land owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines and right-of-way in, on, over and across the parcel of land, and said perpetual easement containing **48,445** square feet, more or less, and said temporary easement #1 being **306** square feet, more or less, and said temporary easement #2 being **300** square feet, more or less, and temporary easement #3 being **400** square feet, more or less, and temporary easement #4 being **538** square feet, more or less, described herein and owned by the GRANTOR, lying and being in the Chapel Hill Township, Orange County, North Carolina, the said easements being more particularly described as follows:

See EXHIBIT PLAT, attached and hereby incorporated

And, the GRANTEE shall have the exclusive right therein to construct, operate, maintain, and replace in, under and/or above, along and through said strip of land **48,445** square feet, more or less, one or more lines of pipe and manholes for the purpose of collecting and transmitting sewage as aforesaid, together with the right to construct and maintain in, under, above, and along said easement such mains, lines, and manholes as shall be necessary in connection with the proper construction, operation, and maintenance of said sewage system; GRANTEE shall also have the right of ingress, egress, and regress through, over, and across the land of the GRANTOR to and from said strip at such times as GRANTEE deems it necessary for the purpose of constructing, maintaining, inspecting, operating, and replacing said lines and of making all necessary alterations and repairs thereto; the lines of pipe shall be located at such point or points,

elevation or elevations below or above the surface of the earth as shall be necessary, for proper operation of the system, and shall be established at the proper grade for running said lines and for conveying sewage as aforesaid, and said mains and manholes, if any, shall be at such point below or above the surface of the earth as may be necessary for the proper operation of said pipe line or lines; and GRANTEE shall have the right, privilege and easement to tap the line or lines and construct, maintain, inspect, operate, and repair sewer laterals from the main to the outside boundary of the **48,445** square feet, more or less, over which this easement and privilege extends; and GRANTEE shall have the privilege, easement, and right to clear and keep cleared the full width of the easement of and from brush, plants, trees, and any and all other materials, obstructions, structures, and encroachments of any kind; the owners of the fee shall retain the right to cultivate the ground lying within the boundaries of the easement, provided that such cultivation shall not interfere with the right of the GRANTEE herein named of ingress, egress, and regress to said easement for the purpose of operation, maintenance, repair, or replacement of said sewer mains, lines, laterals, connections, and manholes; GRANTEE shall also have the right at such times as may be convenient to its purposes of ingress, egress, and regress to and from the said easement over GRANTOR's land adjacent to the said easement to any adjoining lands or public rights of way; and provided further that in all cases where there are roads or streets across the tract of land sufficient for the purpose of convenient egress, ingress, and regress in, to, and from said strip of land, such roads or streets shall be used by the said GRANTEE when it is necessary to come in and upon said strip of land for the purposes aforesaid.

AND, GRANTEE, by and through its employees, agents, contractors, successors and assigns may enter GRANTOR'S said property, and thereupon may install any such temporary facilities as may be necessary to construct, maintain, repair, or continue operation of GRANTEE'S sewer collection system, within the temporary easements of **306, 300, 400, and 538** square feet, more or less; GRANTEE will not remove trees within the temporary easements for the purpose of construction of these facilities unless the parties otherwise agree. However, GRANTEE may excavate the area within the easement as necessary to install the temporary facilities. Upon completion of the construction project involving replacement of the sewage system, GRANTEE will remove the temporary facilities.

It is understood and agreed by the parties that these easements are exclusive easements and the areas within the easements may not be used by third parties without GRANTEE'S express written consent. Said perpetual easement is to be freely and fully transferable by the GRANTEE to its heirs, successors, assigns, agents and/or contractors without prior notice, written or otherwise, to the GRANTOR.

No building or structure of any kind, nor any other utility or improvement, except such as may be constructed or consented to by GRANTEE, shall be located or erected upon or within the above described easements.

It is understood and agreed by the parties that the execution and delivery of this deed of easement by the GRANTOR and its acceptance by the GRANTEE shall not obligate the GRANTEE to construct a sewer line or permit connections to its sewer system. And, it is further understood and agreed that failure of the GRANTEE to construct improvements within the said strip of land and/or to clear or keep cleared said strip of land shall not impair in any way the rights, privileges and easements conveyed to the GRANTEE hereunder.

TO HAVE AND TO HOLD all singular the rights, privileges, and easements as aforesaid, in, along, upon, and through said premises to the said GRANTEE and its successors and assigns forever, save and except the temporary construction easement will terminate upon completion of the construction of the sanitary sewer and/or other utility line.

And GRANTOR covenants with the GRANTEE that GRANTOR is seized of the premises in fee simple, has the right to convey the rights, privileges and easements which are granted herein, that title is free and clear of all liens and encumbrances which may affect the said rights, privileges and easements conveyed herein, and the said GRANTOR will warrant and defend the title to said easement against the claims of all persons or parties whomsoever.

IN WITNESS WHEREOF, **VAN HOUTEN GROUP LLC**, GRANTOR, has caused this instrument to be signed in its corporate name by its duly authorized official, as of the day and year first above written.

VAN HOUTEN GROUP LLC

By: _____

Name_____

Title_____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public of the County and State
aforesaid, certify that _____, personally appeared before me
this day and acknowledged he/she is the Manager of **VAN HOUTEN GROUP, LLC**, and that
he/she signed the foregoing instrument on behalf of **VAN HOUTEN GROUP, LLC** for the
purposes herein expressed.

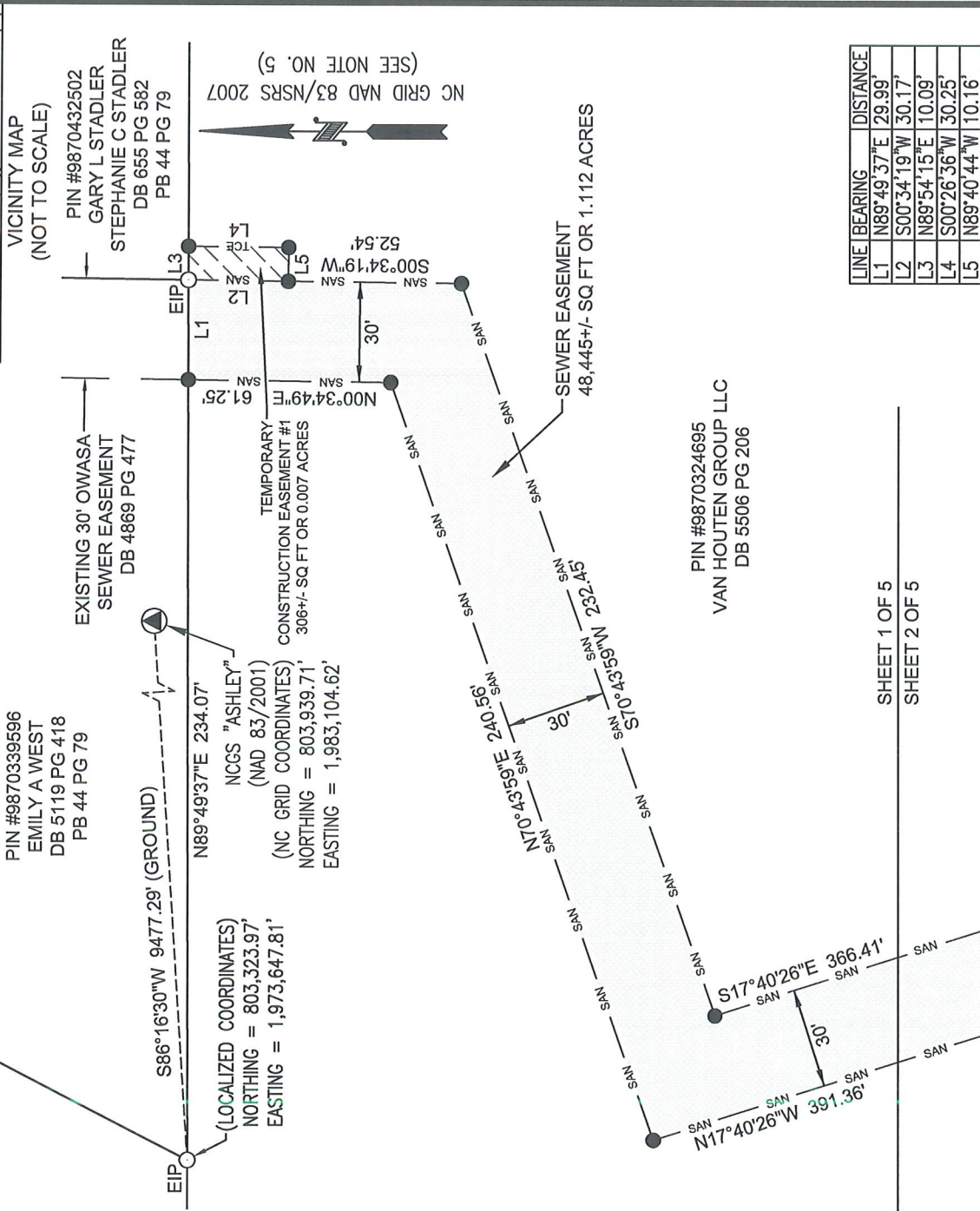
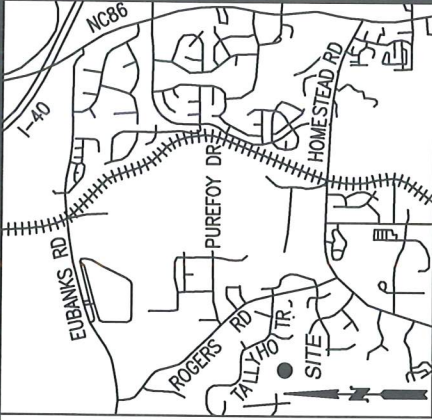
Witness my hand and seal this _____ day of _____, 20_____.

Notary Public

My commission expires: _____

NOTES:

1. THIS EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY. IT DOES NOT CONSTITUTE A DEDICATION OR CONVEYANCE OF EASEMENTS.
2. AREAS COMPUTED BY COORDINATE METHOD.
3. ALL DISTANCES SHOWN ON THIS PLAT ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
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6. THE PROJECT POINT OF LOCALIZATION HAS A NORTHING OF 804,264.72' AN EASTING OF 1,976,764.51' AND AN ELEVATION OF 545.16'. THE PROJECT COMBINED FACTOR IS 0.999927563



STATE OF NORTH CAROLINA, COUNTY OF ORANGE

I, JEFFERY S. MUNN, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION AND FROM RECORDED DOCUMENTS AS REFERENCED; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; THAT THIS EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY. THAT THIS SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 9TH DAY OF MARCH, 2016.

Jeffery S. Munn
JEFFERY S. MUNN, PLS NC L-3946

LEGEND

- CONTROL POINT
- COMPUTED POINT
- EIP O EXISTING IRON PIPE OR PIN
- EIS O EXISTING IRON STAKE
- EXISTING SEWER MANHOLE
- EXISTING PROPERTY LINE SURVEYED
- LINE COMPUTED FROM RECORDS
- SEWER EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT
- DEED BOOK, PAGE
- PB PG PLAT BOOK, PAGE



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3220 GLEN ROYAL RD. RALEIGH, NC 27617
TEL. (919) 788-0224 FAX (919) 788-0232
CORPORATE LICENSE # P-0189

SEWER EASEMENT EXHIBIT PREPARED FOR

ORANGE WATER & SEWER AUTHORITY

PROPERTY OF

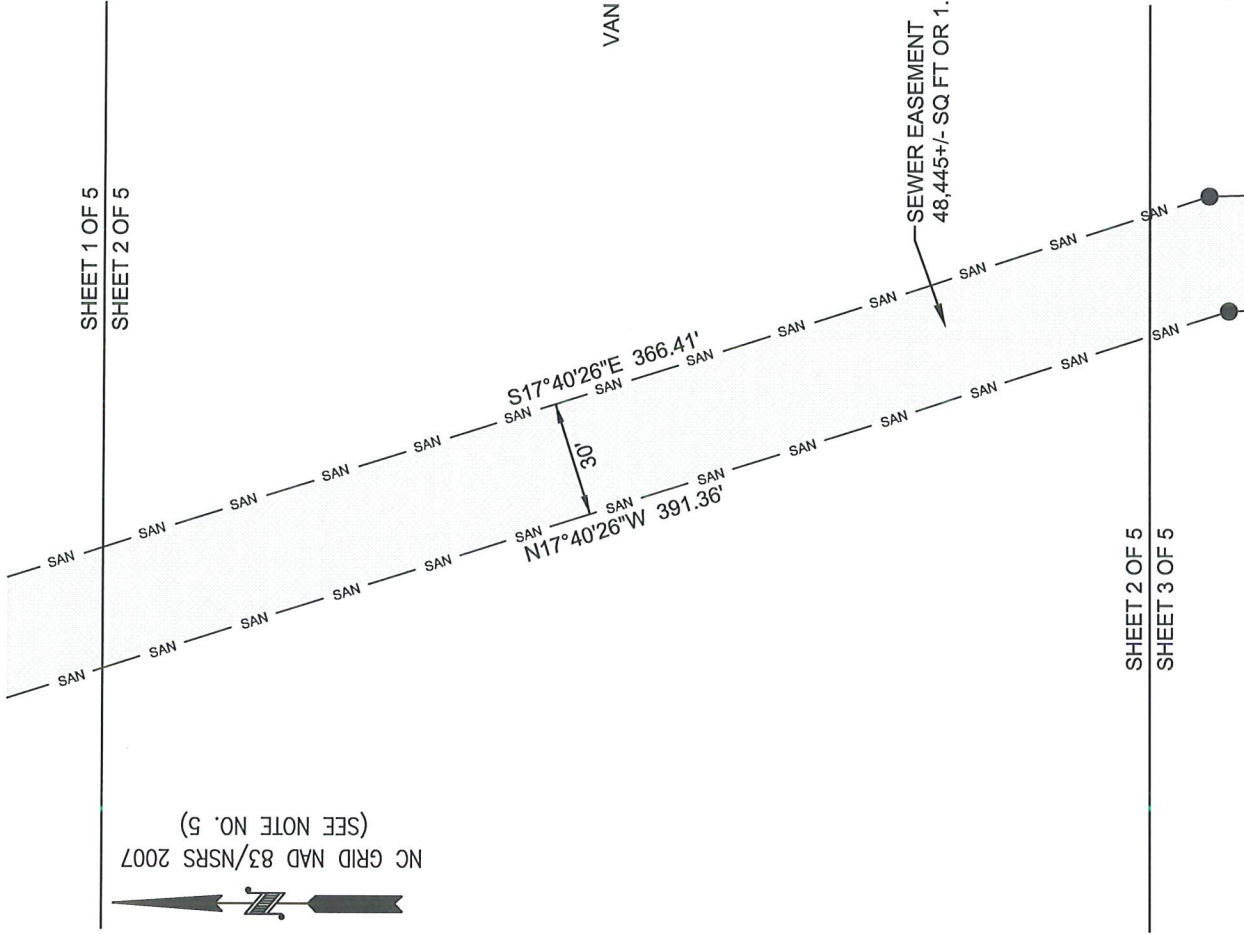
VAN HOUTEN GROUP LLC

ORANGE COUNTY CHAPEL HILL TOWNSHIP NORTH CAROLINA
FEBRUARY 29, 2016 SCALE 1" = 50'

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- 6) THE PROJECT POINT OF LOCALIZATION HAS A NORTHING OF 804,264.72' AN EASTING OF 1,976,764.51' AND AN ELEVATION OF 545.16'. THE PROJECT COMBINED FACTOR IS 0.999927563

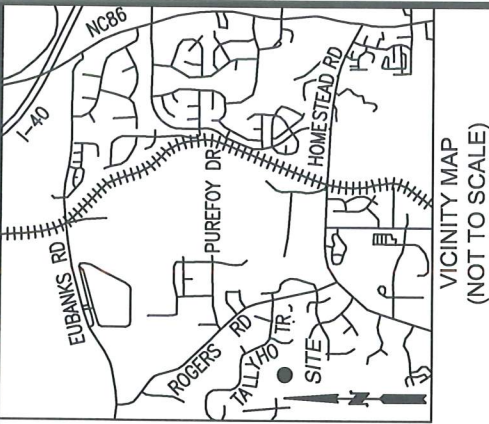
NC GRID MAP 83/NSRS 2007
(SEE NOTE NO. 5)



PIN #9870324695
VAN HOUTEN GROUP LLC
DB 5506 PG 206

SEWER EASEMENT
48,445+/- SQ FT OR 1.112 ACRES

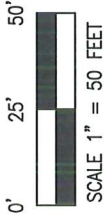
SHEET 2 OF 5
SHEET 3 OF 5



LEGEND

- CONTROL POINT
- COMPUTED POINT
- EIPO EXISTING IRON PIPE OR PIN
- EISO EXISTING IRON STAKE
- EXISTING SEWER MANHOLE
- EXISTING PROPERTY LINE SURVEYED
- LINE COMPUTED FROM RECORDS
- SAN SEWER EASEMENT
- TCE TEMPORARY CONSTRUCTION EASEMENT
- DB PG DEED BOOK, PAGE
- PB PG PLAT BOOK, PAGE

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ORANGE WATER & SEWER AUTHORITY

PROPERTY OF

VAN HOUTEN GROUP LLC

ORANGE COUNTY CHAPEL HILL TOWNSHIP NORTH CAROLINA
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NC GRID MAD 83/NSRS 2007
(SEE NOTE NO. 5)

SHEET 2 OF 5
SHEET 3 OF 5



TEMPORARY
CONSTRUCTION EASEMENT #2
300+/- SQ FT OR 0.007 ACRES

PIN #9870324695
VAN HOUTEN GROUP LLC
DB 5506 PG 206

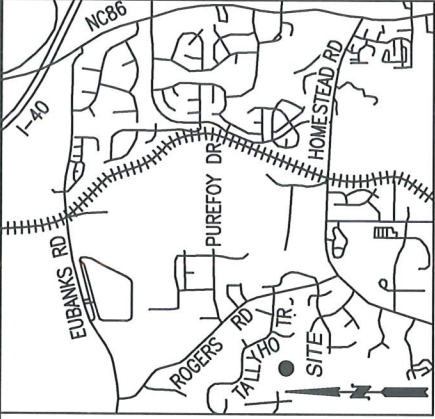
LINE	BEARING	DISTANCE
L11	S88°23'56"W	5.00'
L12	N88°23'56"E	5.00'
L13	S88°23'56"W	5.00'
L14	N88°23'56"E	5.00'

N01°36'04"W 68.45'
N01°36'04"W 60.00'
N01°36'04"W 60.00'
L12
L14
L13
L11

PIN #9870420557
VAN HOUTEN GROUP LLC
DB 5506 PG 206

SEWER EASEMENT
48,445+/- SQ FT OR 1.112 ACRES

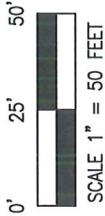
SHEET 3 OF 5
SHEET 4 OF 5



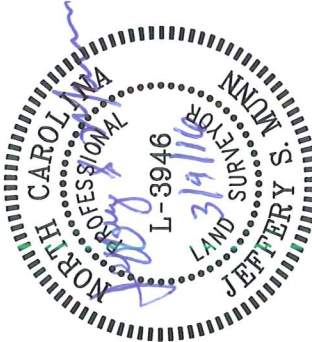
VICINITY MAP
(NOT TO SCALE)

LEGEND

- CONTROL POINT
- COMPUTED POINT
- EXISTING IRON PIPE OR PIN
- EXISTING IRON STAKE
- EXISTING SEWER MANHOLE
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SEWER EASEMENT EXHIBIT PREPARED FOR

ORANGE WATER & SEWER AUTHORITY

PROPERTY OF

VAN HOUTEN GROUP LLC

ORANGE COUNTY CHAPEL HILL TOWNSHIP NORTH CAROLINA

FEBRUARY 29, 2016 SCALE 1" = 50'

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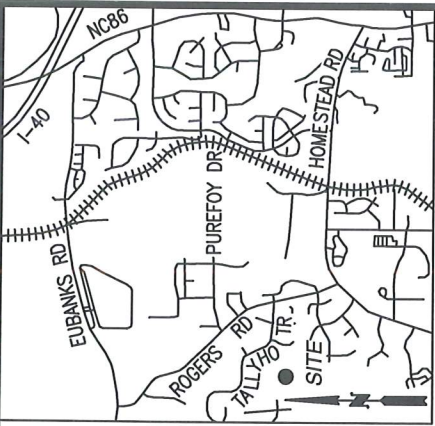
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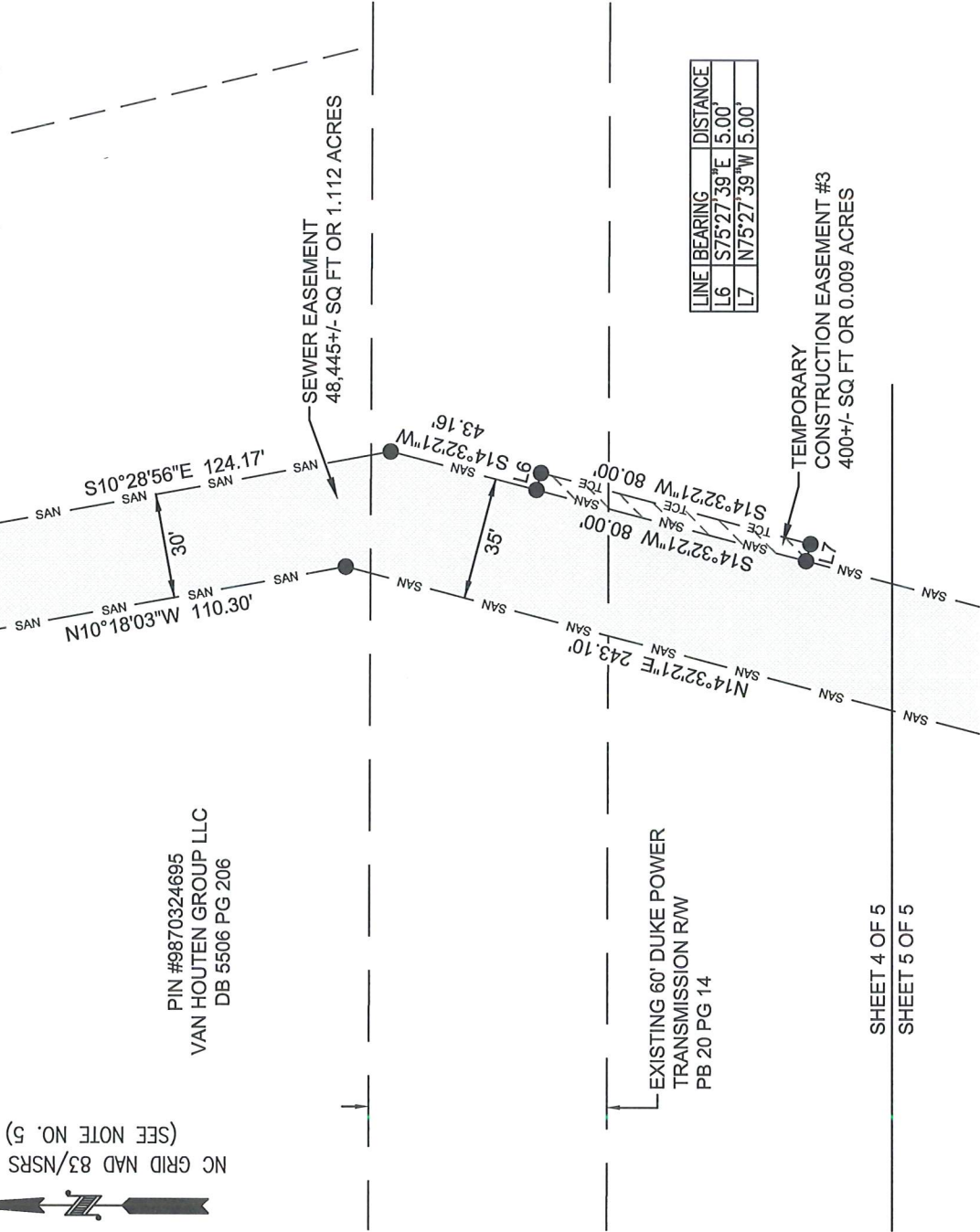
NC GRID NAD 83/NSRS 2007
(SEE NOTE NO. 5)

PIN #9870324695
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SHEET 3 OF 5
SHEET 4 OF 5



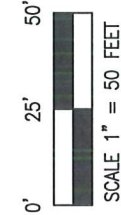
VICINITY MAP
(NOT TO SCALE)



LINE	BEARING	DISTANCE
L6	S75°27'39\"E	5.00'
L7	N75°27'39\"W	5.00'

LEGEND

- CONTROL POINT
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CORPORATE LICENSE # P-0189

SEWER EASEMENT EXHIBIT PREPARED FOR

ORANGE WATER & SEWER AUTHORITY

PROPERTY OF

VAN HOUTEN GROUP LLC

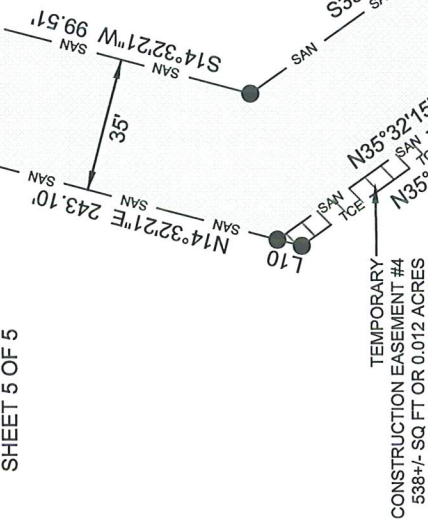
ORANGE COUNTY CHAPEL HILL TOWNSHIP NORTH CAROLINA
FEBRUARY 29, 2016 SCALE 1" = 50'

NOTES:

1. THIS EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY. IT DOES NOT CONSTITUTE A DEDICATION OR CONVEYANCE OF EASEMENTS.
2. AREAS COMPUTED BY COORDINATE METHOD.
3. ALL DISTANCES SHOWN ON THIS PLAT ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
4. THE INFORMATION CONTAINED HEREON IS SUBJECT TO THE FINDINGS OF A COMPLETE AND ACCURATE OPINION OF TITLE, AND TO THOSE EXCEPTIONS AND EASEMENTS OF RECORD, IF ANY, NOTED THEREON.
5. THE DATUM DESCRIBED AND COORDINATES SHOWN HEREON WERE ESTABLISHED BY USING THE N.C. REAL TIME NETWORK. KNOWN PUBLISHED MONUMENTS WERE TIED TO VERIFY ACCURACY.
- 6) THE PROJECT POINT OF LOCALIZATION HAS A NORTHING OF 804,264.72' AN EASTING OF 1,976,764.51' AND AN ELEVATION OF 545.16'. THE PROJECT COMBINED FACTOR IS 0.9999927563

SHEET 4 OF 5
SHEET 5 OF 5

NC GRID NAD 83/NSRS 2007
(SEE NOTE NO. 5)



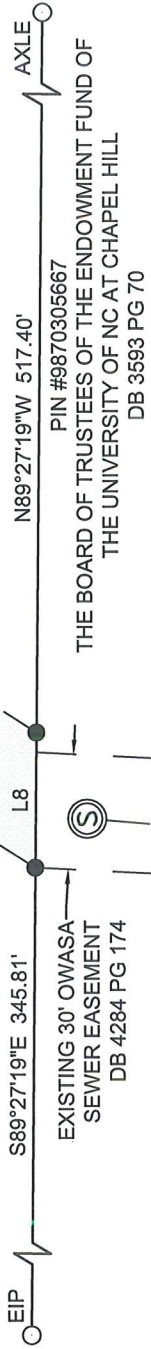
VICINITY MAP
(NOT TO SCALE)

LINE	BEARING	DISTANCE
L8	N89°27'19"W	35.20'
L9	N32°04'20"E	5.41'
L10	N14°32'21"E	6.52'

TEMPORARY
CONSTRUCTION EASEMENT #4
538+/- SQ FT OR 0.012 ACRES

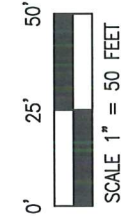
SEWER EASEMENT
48,445+/- SQ FT OR 1.112 ACRES

PIN #9870324695
VAN HOUTEN GROUP LLC
DB 5506 PG 206



LEGEND

- CONTROL POINT
- COMPUTED POINT
- EXISTING IRON PIPE OR PIN
- EXISTING IRON STAKE
- EXISTING SEWER MANHOLE
- EXISTING PROPERTY LINE SURVEYED
- LINE COMPUTED FROM RECORDS
- SEWER EASEMENT
- TEMPORARY CONSTRUCTION EASEMENT
- DEED BOOK, PAGE
- PLAT BOOK, PAGE



THIS EXHIBIT IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS. THE INTENT OF THIS EXHIBIT IS TO ILLUSTRATE THE LOCATION OF THE PROPOSED UTILITY EASEMENT AS SHOWN.



3220 GLEN ROYAL RD. RALEIGH, NC 27617
TEL. (919) 788-0224 FAX (919) 788-0232
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